

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

NEW HOPE HOSPITALITY, LLC,

Plaintiff,

v.

EH NATIONAL BANK,

Defendant.

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CASE NO. _____

INDEX OF STATE COURT DOCUMENTS

1. Petition
2. Citation
3. Docket Page
4. Notice of Removal

Respectfully submitted,
STROMBERG STOCK, PLLC

By: /s/ Mark Stromberg

MARK STROMBERG
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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Notice of Removal has been mailed, by certified mail, return receipt requested, to Joyce W. Lindauer, 12720 Hillcrest, Suite 625, Dallas, Texas 75230; and mailed via regular mail to the 40th Judicial District Court of Ellis County, Texas, for filing in that court, on this the 10th day of July, 2015.

/s/ Mark Stromberg

MARK STROMBERG

Ellis County - District Clerk

Filed 5/5/2015 1:27:48 PM
Melanie Reed
District Clerk
Ellis County, Texas

Case No. 91491

NEW HOPE HOSPITALITY, LLC,
Plaintiff

v.

EH NATIONAL BANK,
Defendant

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IN THE DISTRICT COURT

40TH
JUDICIAL DISTRICT

ELLIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW NEW HOPE HOSPITALITY, LLC, Plaintiff, and complains of EH NATIONAL BANK, and for causes of action would show the Court the following:

I.

Service, Jurisdiction and Venue

1.01 Plaintiff New Hope Hospitality, LLC is a Texas limited liability corporation that resides at 623 Bryant S. Way, Corsicana, TX 75109.

1.02 Defendant EH National Bank a/k/a Excel National Bank is a foreign corporation, with its principal place of business located at 9701 Wilshire Blvd. Suite 101, Beverly Hills, California 90212, which conducts ongoing business within the State of Texas. It may be served by serving any officer or director of the Bank at 9701 Wilshire Blvd. Suite 101, Beverly Hills, CA 90212.

1.03 Venue is proper in this case under Chapter 15.002(a)(1) and (4) of the Texas Civil Practice & Remedies Code as all or a substantial part of the events or omissions which gave rise to the claim occurred in Ellis County.

1.04 This is a Level 2 Case.

II.

Background Facts

- 2.01 Plaintiff is a limited liability company that owns a hotel in Corsicana, Texas.
- 2.02 On March 30, 2012 New Hope filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").
- 2.03 On December 11, 2012 Debtor filed its plan of reorganization (the "Plan").
- 2.04 On January 4, 2013 EH National Bank made its Election of Secured Creditor Pursuant to 11 U.S.C. Section 1111(b).
- 2.05 On January 11, 2013 New Hope filed its Amended Chapter 11 Plan.
- 2.06 On February 5, 2013 New Hope filed its Modified Chapter 11 Plan.
- 2.07 On March 13, 2013 New Hope filed a further Modified Chapter 11 Plan.
- 2.08 On March 29, 2013 the Plan, as modified was approved and the Court entered an order confirming the Plan (the "Confirmation Order").
- 2.09 The Plan's effective date was in 2013 (the "Effective Date"), and following the Effective Date, under the Plan New Hope commenced payments to its creditors and EH National Bank.
- 2.10 A final decree was entered and the case closed on September 19, 2013.
- 2.11 After the case was closed New Hope arranged financing to pay off its creditors on or about January 27, 2015.
- 2.12 When New Hope requested a pay-off from EH National Bank given the effect of the Section 1111(b) election, New Hope came up with an amount to pay-off the Bank and the Bank refused to accept the payoff. Accordingly, New Hope overpaid the Bank in the amount of at least \$407,868.56.

2.13 New Hope seeks to recover these overpayment amounts.

III.
Causes of Action

Breach of Contract

3.01 Plaintiff incorporates all of Paragraphs I through II above as part of the following claim.

3.02 A valid contract exists between Plaintiff and Defendant in the form of a confirmed Chapter 11 Plan of Reorganization. Plaintiff has performed in full under the Plan by paying EH Bank more than its approved allowed claims.

3.03 Defendant has breached the contract by demanding an amount that is greater than what was due to it under the confirmed Plan.

3.04 Defendant has breached the contract by accepting an amount that is greater than what was due to it under the confirmed Plan.

3.05 Defendant has breached the contract by failing to refund and return the overpayment it received.

3.06 Defendant's breach is the proximate cause of Plaintiff's injuries. But for Defendant's breach, Plaintiff would have retained some \$407,868.56 that it has paid to the Defendant. Plaintiff hereby makes claim for all damages caused by Defendant's breach and sues Defendant.

Money Had and Received

4.01 Plaintiff incorporates all of Paragraphs I through II above as part of the following claim.

4.02 Defendant has wrongfully retained monies that rightfully belong to Plaintiff.

4.03 Defendant should return the monies that it has wrongfully received.

4.04 Plaintiff sues for return of such monies in at least the amount of \$407,868.56.

Declaratory Judgment

5.01 Plaintiff incorporates all of Paragraphs I through II above as part of the following claim.

5.02 Defendant is aware that Plaintiff has overpaid Defendant.

5.03 Plaintiff seeks to have the Court declare the rights of the parties under the Plan including the amount due to Defendant.

5.04 Upon such declaration it should be determined that Plaintiff has overpaid Defendant in the amount of at least \$407,868.56.

5.05 Plaintiff seeks to recover the overpayment from Defendant.

Pre-Judgment Interest

6.01 As a direct and proximate result of the conduct of Defendant, as described hereinabove, Plaintiff has been damaged and is entitled to recover pre-judgment interest in addition to the other damages and costs to be awarded by this Court. Plaintiff seeks pre-judgment interest at the maximum lawful rate.

Post-Judgment Interest

7.01 Plaintiff is additionally entitled to interest on any judgment received in this action at the highest lawful rate from the date of judgment until paid.

Attorney's Fees

8.01. Due to the actions and conduct of Defendant, as described hereinabove, Plaintiff has been compelled to retain the undersigned attorney to represent it and to protect its interests in this action. Consequently, Plaintiff is entitled to recover its reasonable and necessary attorney's fees pursuant to Chapter 38 Texas Civil Practice & Remedies Code.

Request for Disclosure

9.01 Please take notice that pursuant to Rule 194 of the Texas Rules of Civil Procedure, you are hereby requested to disclose the information or material described in Rule 194.2, within the time required by Texas Rule of Civil Procedure 194.3(a), including:

- (a.) The correct names of the parties to this lawsuit;
- (b.) The name, address and telephone number of any potential parties;
- (c.) The legal theories and, in general, the factual bases of the responding party's claims or defenses;
- (d.) The amount and any method of calculating economic damages;
- (e.) The name, address and telephone number of persons having knowledge of relevant facts, along with a brief statement of each identified person's connection with the case;
- (f.) For any testifying experts:
 - 1. The expert's name, address and telephone number;
 - 2. The subject matter on which the expert will testify;
 - 3. The general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to your control, the documents reflecting such information;
 - 4. If the expert is retained by, employed by, or otherwise subject to your control:

- (A.) All documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by or prepared by or for the expert in anticipation of the expert's testimony; and,
- (B.) The expert's current resume and bibliography;
- (g.) Any discoverable indemnity and insuring agreements;
- (h.) Any discoverable settlement agreements;
- (i.) Any discoverable witness statements;
- (l.) the name, address, and telephone number of any person who may be designated as a responsible third party.

In the event that your response to this Request requires the production of voluminous documents, Plaintiff would request that the responsive documents be produced for inspection and/or reproduction in the offices of the undersigned attorneys. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, you are hereby advised that the production of documents in response to this Request operates to authenticate documents produced such that they may be used against you in any pretrial proceeding or at trial unless you timely and properly object to the authenticity of the documents in accordance with Rule 193.7 of the Texas Rules of Civil Procedure.

Request for Jury Trial

10.1 Plaintiff requests that the case be tried to a jury, and hereby tenders the jury fee along with the filing charges for this lawsuit.

Prayer


WHEREFORE, Plaintiff New Hope Hospitality, LLC requests that upon final trial, it have judgment against Defendant EH National Bank for the following:

1. Actual damages of at least \$407,868.56;
2. Reasonable and necessary attorney's fees of at least \$25,000.00 together with additional awards in event of appeals;
3. Pre-judgment and post-judgment interest at the highest lawful rate;
4. Costs of suit;
5. Declaration that the Plaintiff has overpaid the Defendant and is entitled to the return of at least \$407,868.56;
6. Return of monies wrongfully retained in at least the amount of \$407,868.56; and
7. Such other and further relief to which Plaintiff may show itself justly entitled.

Dated: May 4, 2015.

Respectfully submitted,

JOYCE W. LINDAUER
Attorney at Law
12720 Hillcrest Suite 625
Dallas, Texas 75230
(972) 503-4033
(972) 503-4034 (Fax)
Email: joyce@joycelindauer.com

By: 
Joyce W. Lindauer
State Bar No. 21555700

ATTORNEY FOR PLAINTIFF

THE STATE OF TEXAS
COUNTY OF ELLIS
CAUSE NO: 91491
CITATION

TO: EH NATIONAL BANK
C/O ANY OFFICER OF DIRECTOR
9701 WILSHIRE BLVD, STE 101
BEVERLY HILLS, CA 90212

'15 JUN 19 PM3:18

Im Person

Defendant, in the hereinafter styled and numbered cause: 91491.

You are hereby commanded to appear before 40TH JUDICIAL DISTRICT COURT of ELLIS COUNTY, TEXAS to be held at the courthouse of said county in the City of Waxahachie, County of Ellis County, Texas, by filing a written answer to the petition of Plaintiff at or before 10:00 A.M. of the Monday next after the expiration of 20 days after the date of service hereof, a copy of which accompanies this citation, in cause number 91491 styled

NEW HOPE HOSPITALITY, LLC
VS:
EH NATIONAL BANK

Filed in said court on the 05/05/2015

The name and address of the attorney for plaintiff, or the address of the plaintiff is: JOYCE W. LINDAUBER, 8140 WALNUT HILL LN, STE 301, DALLAS, TX 75231.

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorneys do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of 20 days after you were served this citation and petition, a Default Judgment may be taken against you."

WITNESS: Melanie Reed, District Clerk of the District Court of Ellis County, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL OF SAID COURT AT COUNTY OF ELLIS, TEXAS, ON THIS THE 6th day of May, 2015.

Melanie Reed, District Clerk
109 S. Jackson Street Rm. 209
Waxahachie, TX 75165

SEAL

By

Mary Hinds
Mary Hinds, Deputy



[Cancel](#) [Help](#)

Civil Case Inquiry

General Parties Pleadings Docket Fees Issuances Employers Children AG Activity Accts Property Jdg Docket

General Information

91491

Cause #	91491	C.O.A.	Confidential	Sealed Dt	Non-Disclosed Dt
		DEBT	SUIT ON DEBT		

File Date	Court	Criminal No	Probate No	Answer Filed	Dispo Date	Disposition
05/05/2015	40TH JUDICIAL DISTRICT COURT					

Status	Status Date	Status Remarks	State Report Column
			CONTRACT CONSUMER/COMMERCIAL DEBT

Docket Date	Docket Type	Appealed From	Paupers Oath	Mistrial Declared	File Location

Bond Type	Code	Bond Company	Bond Amt	Bond Date	Surety	Attorney	Name	Envelope
								Envelope

Other Reaching Dockets - Open Pop-Up to View State Report Columns

Sel	#	File Date	Party	Plead Code	Dispo Date	Disposition
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<input type="checkbox"/>	2					

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Style	NEW HOPE HOSPITALITY, LLC VS. EH NATIONAL BANK	Build Style
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Civil Case Inquiry

[General](#) [Parties](#) [Pleadings](#) [Docket](#) [Fees](#) [Issuances](#) [Employers](#) [Children](#) [AG](#) [Activity](#) [Accts](#) [Property](#) [Jdg Docket](#)

Pleadings

91491

Pleadings History

Sel	#	Date	Code	Description	Party	Qty	Vol/Pge	Img	Remarks	Amount	User	AG	View
<input type="checkbox"/>	1	05/05/2015	O/P/CV	ORIGINAL PET	Plaintiff	1				257.00	MHIND		View
<input type="checkbox"/>	2	05/05/2015	CIT	CITATION	Plaintiff	1			EH NATL BAN	8.00	MHIND		View
<input type="checkbox"/>	3	05/05/2015	CIT	CITATION	Plaintiff	1				8.00	MHIND		View
<input type="checkbox"/>	4	05/05/2015	STATE	STATE INFO S	Plaintiff	1					MHIND		View
<input type="checkbox"/>	5	05/05/2015	EFILE	E-FILE SERV	Plaintiff	1				2.00	MHIND		View
<input type="checkbox"/>	6	05/05/2015	REC	RECEIPT ISSU	Plaintiff				349800	275.00	MHIND		View
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Plaintiff Total		Defendant Total		Intervenor Total		Movant Total		Respondent Total		Cross Complainant Total		Third Party Total	
0.00													

CAUSE NO. 91491

NEW HOPE HOSPITALITY, LLC,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	ELLIS COUNTY, TEXAS
	§	
EH NATIONAL BANK,	§	
	§	
Defendant.	§	40th JUDICIAL DISTRICT

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Please take notice that Defendant **EH NATIONAL BANK** ("Defendant") has on July 13, 2015, pursuant to federal law, filed with the clerk of the United States Court for the Northern District of Texas, Dallas Division, a Notice of Removal, a copy of which is attached and filed with this document, and that this action is removed to the United States District Court for further proceedings as of today, July 13, 2015. This court is respectfully requested to proceed no further in this action, unless and until such time as the action may be remanded by order of the United States District Court.

Respectfully submitted,
STROMBERG STOCK, PLLC

By: /s/ Mark Stromberg

Mark Stromberg, Esq.
State Bar No. 19408830

8750 North Central Expressway, Suite 625
Dallas, Texas 75231
Telephone: (972) 458-5353
Facsimile: (972) 861-5339

ATTORNEYS FOR EH NATIONAL BANK

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served in accordance with Rule 21 of the Texas Rules of Civil Procedure by Certified Mail, Return Receipt Requested and/or hand delivery upon Joyce W. Lindauer, 12720 Hillcrest, Suite 625, Dallas, Texas 75230, on this the 10th day of July, 2015.

/s/ Mark Stromberg

Mark Stromberg